



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,536	03/19/2001	Vladimir Matena	SUNMP002A	2568

25920 7590 06/28/2005

MARTINE PENILLA & GENCARELLA, LLP
710 LAKEWAY DRIVE
SUITE 200
SUNNYVALE, CA 94085

EXAMINER

DELGADO, MICHAEL A

ART UNIT PAPER NUMBER

2144

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/812,536

Applicant(s)

MATENA ET AL.

Examiner

Michael S. A. Delgado

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

AD

DETAILED ACTION

Response to Arguments

1. In response to applicant's arguments, the recitation Java Platform has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-13 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patents 6,516,350 and 6,529,950 incorporated by reference by Lumelsky et al in view of US 6,665,861 by Francis et al.

In claim 1, Lumelsky teaches about a system for providing application-specific strategies to a JAVA platform, comprising (US 6,516,350 Fig 6):

Art Unit: 2144

a runtime subsystem “system management layer” (US 6,516,350 Col 11, lines 20-30) ;
and

an application “media streaming” having a control module “SCP” in communication with the runtime subsystem, the application further including a plurality of service modules in communication with the control module, wherein the control module includes application-specific policies “QoS” for the application (US 6,516,350 Col 15, lines 5-20);

but does not explicitly teach about the application being implemented using a JAVA programming language.

JAVA is well known for its portability and is well suited for load balancing operation as disclosed by Francis (Col 1, line 65-Col 2, line 5) (Col 5, lines 15-20).

The portability in JAVA, makes software programming less complex, as it can be used by different platform, which is the case in load balancing operation

It would have been obvious to some one of ordinary skill at the time of the invention to use a JAVA programming language because of its portability.

In claim 3, Lumelsky combined with Francis, teaches about a system as recited in claim 1, wherein the application-specific policies include application-specific start policies (US 6,516,350 Col 15, lines 5-20). (If the application quality is below policy amount, start application elsewhere).

In claim 4, Lumelsky combined with Francis, teaches about a system as recited in claim 3, wherein the application-specific policies include application-specific stop policies (US

Art Unit: 2144

6,516,350 Col 15, lines 5-20). (If the application quality is below policy amount, stop application to facilitate remapping).

In claim 5, Lumelsky combined with Francis, teaches about a system as recited in claim 4, wherein the control module manages the service modules (US 6,516,350 Col 15, lines 5-20).

In claim 6, Lumelsky combined with Francis, teaches about a system as recited in claim 1, wherein the control module is capable of starting a child application “RMF” (US 6,516,350 Col 5, lines 49-60) (US 6,516,350 Col 14, line 50-Col 15, line 5).

In claim 7, Lumelsky combined with Francis, teaches about a system as recited in claim 6, wherein the control module starts the child application by starting a child control module “Pluggable”, the child control module being part of the child application (US 6,516,350 Col 14, line 50-Col 15, line 5).

In claim 8, Lumelsky combined with Francis, teaches about a method for starting an application having application-specific strategies in a JAVA environment, comprising the operations of (US 6,516,350 Fig 6):

providing a parent control module “SCP” having application-specific policies “QoS” for a parent JAVA application, wherein the application specific policies are programmed using a JAVA programming language (US 6,516,350 Col 15, lines 5-20) (Covered in claim 1);

Art Unit: 2144

generating a child control module “Pluggable” using the parent control module, the child control module being part of a child application “RMF” (US 6,516,350 Col 14, line 50-Col 15, line 5); and

executing the child application using the child control module (US 6,516,350 Col 15, lines 5-15).

In claim 9, Lumelsky combined with Francis, teaches about a method as recited in claim 8, further comprising the operation of sending a request from the parent control module to a runtime executive subsystem, the request including a message to start the child application (US 6,516,350 Col 11, lines 20-30) (US 6,516,350 Col 15, lines 5-20).

In claim 10, Lumelsky combined with Francis, teaches about a method as recited in claim 8, further comprising the operation of starting a plurality of service modules using the child control module, the plurality of service modules being part of the child application (US 6,516,350 Col 14, line 50-Col 15, line 5) (US Patent 6,529,950 Col 2, lines 50-55).

In claim 11, Lumelsky combined with Francis, teaches about a method as recited in claim 10, further comprising the operation of sending a request from the child control module to the runtime executive subsystem, the request including a message to start a service module (US Patent 6,529,950 Col 2, lines 50-55) (US 6,516,350 Col 11, lines 20-30) (US 6,516,350 Col 15, lines 1-5).

In claim 12, Lumelsky combined with Francis, teaches about a method as recited in claim 11, wherein each service module is executed using a server subsystem (US 6,516,350 Col 11, lines 20-30) (US 6,516,350 Col 15, lines 1-15).

In claim 13, Lumelsky combined with Francis, teaches about a method as recited in claim 12, wherein the child control module includes the application-specific policies of the parent control module “extensible” (US Patent 6,529,950 Col 2, lines 50-55).

In claim 15, Lumelsky combined with Francis, teaches about a method for stopping an application having application-specific strategies in a JAVA environment, comprising the operations of (US 6,516,350 Fig 6):

providing a parent control module “SCP” having application-specific policies for a parent JAVA application, wherein the application specific policies are programmed using a JAVA programming language (US 6,516,350 Col 15, lines 5-20) (Covered in claim 1);

stopping execution of a child control module “Pluggable” using the parent control module, the child control module being part of a child application “RMF” (US 6,516,350 Col 15, lines 1-20); and (By migrating the parent control to another server, the child application and child control will have to be stopped and moved to the new location of the parent).

stopping execution of the child application using the child control module (US 6,516,350 Col 15, lines 5-20). (This is a part of the migration process)

In claim 16, Lumelsky combined with Francis, teaches about a method as recited in claim 15, further comprising the operation of sending a request from the parent control module to a runtime executive subsystem, the request including a message to stop the child application (US 6,516,350 Col 11, lines 20-30) (US 6,516,350 Col 15, lines 5-20).

In claim 17, Lumelsky combined with Francis, teaches about a method as recited in claim 16, further comprising the operation of stopping a plurality of service modules using the child control module, the plurality of service modules being part of the child application (US Patent 6,529,950 Col 2, lines 50-55) (US 6,516,350 Col 15, lines 5-20). (By migrating the parent control to another server, the child application and child control will have to be stopped and moved to the new location of the parent).

In claim 18, Lumelsky combined with Francis, teaches about a method as recited in claim 17, further comprising the operation of sending a request from the child control module to the runtime executive subsystem, the request including a message to stop a service module (US 6,516,350 Col 11, lines 20-30) (US 6,516,350 Col 15, lines 5-20).

In claim 19, Lumelsky combined with Francis, teaches about a method as recited in claim 15, wherein the child control module includes the application-specific policies of the parent control module (US 6,516,350 Col 15, lines 1-15). (Pluggable that support SCP action)

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US patent no. 6,463,454 by Lumelsky et al. teaches about a system and method for integrated load distribution and resource management on internet environment

US patent no. 6,393,459 by Lurndal. teaches about a process migration method for multicomputer system, involves issuing request for migration of processes from source site to destruction site and creating copy of process operative on destination site.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael S. A. Delgado whose telephone number is (571) 272-3926. The examiner can normally be reached on 7.30 AM - 5.30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923

Art Unit: 2144

. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MD


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100